IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

AS.No. 83 of 1994()

OS.39/1988 of SUB COURT, SULTHAN BATHERY
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APPELLANT - DEFENDANTS 2, 3 & 5:
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1. CUMPA POKKER, S/O. AVULLA HAJI, AGED 51, KAVUMKUNNIL, VELLAMUNDA AMSOM, DESOM MANANTHAVADY.

2. CUMPA MOIDU HAJI, DO AGED 45, DO. DO.

3. CUMPA ALI, AGED 38. DO. DO. DO.

BY ADV. SRI.GEORGE VARGHESE

RESPONDENTS - PLAINTIFF & DEFENDANTS:
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1. CUMPA KATHEEYA, W/O. AVULLA , AGED 42, RESIDING AT THARRUVANNA, SWASHAM CHANGADAM DEOSM, MANNANTHAVADY TALUK.

2. CUMPA KUNHAMI, D/O. AVULLA, AGED 57 YEARS, RESIDING AT VARAMPATTA, VELLAMUNDA AMSOM DESOM, MANANTHAVADY TALUK.

3. CUMPA BEEYATHU, S/O.AVULLA HAJI, AGED 40 YEARS, SWASHAM, VELLAMUNDA AMSOM DESOM, MANANTHAVADY TALUK.

4. MANIMA PATHU, W/O. LATE MAMMU HAJI, AGED 38 YEARS, RESIDING AT THORAMPATTAKUNNIL, VELLAMUNDA AMSOM DESOM, MANANTHAVADY TALUK.

5. ASYA, D/O. MANIMA PATHU, AGED 21 YEARS, SWASHAM, VELLAMUNDA DESOM, MANANTHAVADY TALUK.

6. AVULLA, S/O. MAMMU HAJI, AGRICULTURIST, AGED 19 YEARS, VELLAMUNDA AMSOM DESOM, MANANTHAVADY TALUK.

7. SAFIA, D/O.MAMMU HAJI, AGED 14 YEARS, VELLAMUNDA AMSOM DESOM, MANANTHAVADY TALUK.

8. NAZAR, S/O. MAMMU HAJI, AGED 10 YEARS, VELLAMUNDA AMSOM DESOM, MANATHAVADY TALUK.

9. USMAN, S/O. MAMMU HAJI, AGD 7 YEARS, VELLAMUNDA AMSOM DESOM, MANANTHAVADY ALUK.

MINORS RESPONDENTS 7 TO 9 ARE REPRESENTED BY THEIR MOTHER, THE 4TH RESPONDENT.

BY ADV. SRI.T.A.RAMADASAN

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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A.S. NO. 83 OF 1994

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Dated this the 30th day of November, 2007

J U D G M E N T

Defendants 2, 3 and 5 in O.S. No.39 of 1988 on the file of the Sub Court, Sultan Bathery, are the appellants. First respondent plaintiff, sister of the appellants, filed the suit for partition. Plaintiff and defendants 1 to 5 and deceased Mammu Haji are children of deceased Avulla Haji and deceased Thoden Pathu. Avulla Haji died in the year 1964 and Thoden Pathu dided in the year 1985. Mammu Haji died in the year 1984. Defendants 6 to 11 are the heirs of Mammu Haji. Plaintiff claimed partition and share in the suit properties. The appellants, who are the sons of Avulla Haji, opposed partition. Defendants 1 and 4, who are the daughters of Avulla Haji, admitted the plaint claim. Serious dispute was only in respect of one item of properties on the ground that that item was not available for partition. It was contended that plaint item No.4 was not a property owned by Avulla Haji. It originally belonged to Thoden Pathu under Patta No.DK.1101/67. The fact that Patta stood in the name of

Thoden Pathu was admitted by the plaintiff also. But it was contended that deceased Avulla Haji was holding property under a lease deed and it devolved upon the plaintiff and defendants. It was further contended that the right under Exhibit B2 Patta will enure all co-owners.

2. Trial court considered all aspects of the matter and accepted the contention and held that though Exhibit B2 stands in the name of Thoden Pathu, that item was also partible. That is a finding of fact based on good evidence. The decree in the suit was passed as early as on 31.3.1992. Appeal was filed in the year 1994, which was pending for all these years on account of the delay in filing the appeal. I do not find any reason to interfere with the finding of fact which is based on good evidence. So there is no merit in the appeal and the same is only to be dismissed.

In the result, appeal is dismissed under Order XL Rule 11 of the Code of Civil Procedure.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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A.S.NO. 83 OF 1994

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J U D G M E N T

30TH NOVEMBER, 2007